TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. ~~318.~~ 63

FREDERIC L. GRANT SHOE COMPANY, APPELLANT,

vs.

W. M. LAIRD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.

FILED JUNE 28, 1905.

(19,820.)

(19,820.)

COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 318.

GRANT SHOE COMPANY, APPELLANT,

vs.

W. M. LAIRD COMPANY.

E DISTRICT COURT OF THE UNITED STATES FOR WESTERN DISTRICT OF NEW YORK.

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E (INC.), PRINTERS, WASHINGTON, D. C., MARCH 12, 1906.

1 UNITED STATES OF AMERICA,
Western District of New York.

To Frederic L. Grant Shoe Company, of Rochester, in the county of Monroe, said district, Greeting:

For certain causes offered before the District Court of the United States of America, within and for the Western District of New York, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at Buffalo, in said district, on the 25th day of July, A. D. 1903, to answer to a petition filed by W. M. Laird Company of Pittsburg, Pa., in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness, the Honorable John R. Hazel, Judge of said court, and the seal thereof, at the City of Buffalo, this 15th day of July, A. D. 1903.

[SEAL OF THE COURT.] GEO. P. KEATING, *Clerk.*

Notice to Defendant: It is not necessary for you to appear on the return of this subpœna. You may appear and plead to the petition at any time within five days after said return day.

[Endorsed:] No. 1502. United States District Court, Western District of New York. In Bankruptcy. In the matter of Frederic L. Grant Shoe Co. an alleged Bankrupt. Subpœna to alleged bankrupt. Filed July 23, 1903. George P. Keating, Clerk. Filed ——, 190–.

1½ Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, *W. District of N. Y., ss:*

I hereby certify and return that I served the annexed subpœna on the therein-named Frederic L. Grant Shoe Co. by handing to and leaving a true and correct copy thereof and also duplicate petition with Frederic L. Grant, President of said Company personally at Charlotte (Ontario Beach) in said District on the 18th day of July, A. D. 1903.

WM. R. COMPTON,
U. S. Marshal,
By ROBT. D. BURNS, *Deputy.*

2 United States District Court, Western District of New York.

In Re FREDERIC L. GRANT SHOE CO., an Alleged Bankrupt.

To the Hon. John R. Hazel, Judge of the District Court of the United States for the Western District of New York:

The petition of W. M. Laird Co., of Pittsburg, Pa., respectfully shows:

First: That the above named Frederic L. Grant Shoe Co., of the City of Rochester, in said District, is a corporation duly incorporated and existing under and by virtue of the Laws of the State of New York, and having its office and principal place of business in the City of Rochester, County of Monroe and State of New York.

Second: That for the greater portion of the six months next preceding the date of the filing of this petition said Frederic L. Grant Shoe Co., has had its office and principal place of business at the City of Rochester aforesaid, in said Western District of New York, and that said organization was organized for, has been and is by occupation, a manufacturer of shoes and is engaged principally in manufacturing and mercantile pursuits.

Third: That said Frederic L. Grant Shoe Co. owes debts to the amount of $1,000 and over and is insolvent.

3 *Fourth:* That as your petitioner is informed by the president of said Frederic L. Grant Shoe Co., and verily believes, said Frederic L. Grant Shoe Co. has less than twelve creditors.

Fifth: That your petitioner is a corporation duly organized and existing under and by virtue of the Laws of the State of New Jersey, engaged in the business of buying and selling shoes and foot-wear, and having its office and principal place of business in the City of Pittsburg, State of Pennsylvania.

Sixth: That your petitioner is a creditor of said Frederic L. Grant Shoe Co., having provable claims against it amounting in the aggregate to more than $500, and that your petitioner has no security of any kind for said debt, or any part thereof, nor has your petitioner received a preference within the meaning of the bankruptcy act as amended.

Seventh: That your petitioner's claim arises from the following transactions and circumstances: On or about September 3d, 1902, and between that date and May 22d, 1903, your petitioner purchased of said Frederic L. Grant Shoe Co., at various times and in various amounts, merchandise consisting of women's shoes, said shoes to be manufactured by said Frederic L. Grant Shoe Co., for your petitioner in accordance with samples shown your petitioner at the various times that the orders therefor were given. That in pursuance of such orders so given said shoes were manufactured by said Frederic L. Grant Shoe Co. and delivered to your petitioner, said shoes so delivered aggregating several thousand pairs. That

4 your petitioner, upon receipt of said shoes from time to time, remitted and paid to said Frederic L. Grant Shoe Co. the price agreed to be paid therefor, and all of said shoes so delivered

have been fully paid for in accordance with the terms upon which the same were purchased. That prior to the purchase of any of said shoes said Frederic L. Grant Shoe Co. did, for a valuable consideration and in consideration of the purchase by your petitioner of said merchandise, expressly agree, guarantee and warrant that all shoes which they might thereafter manufacture for and sell to your petitioner, would be first-class in every particular, both as to workmanship and materials, and would give perfect satisfaction. That such express warranty was made and was a part of the transaction upon each purchase of shoes hereinbefore referred to. That said Frederic L. Grant Shoe Co. has made a breach of said express warranty, in that of the shoes sold and delivered to your petitioner as aforesaid there were, and are, 1864 pairs of women's high heeled shoes which do not give satisfaction to your petitioner or its customers and which are defective in workmanship and materials, in that the heels are not made of proper materials, the soles are not made of proper materials, the facing of the heels is not made of proper materials, and the covering of the heels is not made of proper materials, and the adhesive substance used in the manufacture of said shoes was not a proper substance to use for that purpose. That said defects were, and are, latent defects, being undiscoverable upon an examination of the shoes as they came from the factory. The result of
5 such defects is that the soles of said shoes crack and split, the leather facing of the heel peels off, and the outer covering of the heel becomes loosened and comes off, and furthermore, the wooden foundation of the heel splits and breaks, so that the shoe cannot be worn. That by reason of the facts and circumstances hereinbefore alleged, your petitioner has suffered damage in the sum of $3,732.80, which is the amount of its claim against said Frederic L. Grant Shoe Co.

Eighth: That within four months preceding the filing of this petition, and on or about May 15th, 1903, the said Frederic L. Grant Shoe Co., while insolvent, committed an act of bankruptcy, in that, as your petitioner is informed by the president of said Frederic L. Grant Shoe Co. and by one McAuliffe, an agent and representative of the German American Bank of Rochester, and verily believes, it did sell, assign, transfer and set over unto said German American Bank of Rochester, N. Y., a domestic banking corporation, all of its property of every name and nature, consisting of stock and materials on hand, machinery, tools, office furniture and fixtures, cash on hand, bills and accounts receivable and other assets, upon the understanding and agreement that said bank, being the principal creditor of said Frederic L. Grant Shoe Co., would pay the other creditors of said Frederic L. Grant Shoe Co., except your petitioner, the amount of their various claims, which are comparatively small in amount, and would out of the proceeds of said property reimburse itself for such payments and pay to itself the amount of the indebtedness to it of said Frederic L. Grant Shoe Co. That the result of such
6 transfer is that all of the creditors of said Frederic L. Grant Shoe Co., except your petitioner, will receive a large percent-

age of the amount of their claims, and that your petitioner will receive nothing upon its claim.

Ninth: That within four months preceding the filing of this petition, and since May 1st, 1903, said Frederic L. Grant Shoe Co. being at all of said times insolvent, committed other acts of bankruptcy, in that it did, from time to time, pay various creditors to which it was indebted, whose names and addresses are unknown to this petitioner, various amounts in settlement of the claims of said creditors, and in that since said May 1st, 1903, it has from time to time, the precise dates being unknown to this petitioner, paid to said German American Bank various sums, the amounts of which are unknown to this petitioner, to apply upon the indebtedness to said German American Bank of said Frederic L. Grant Shoe Co., and in that it paid to the estate of C. B. Woodworth, a crediter, on or about June 20th, 1903, the amount of its indebtedness to said estate, being about the sum of $175.

Tenth: That the result of said transfer to said German American Bank and of said payments to the estate of C. B. Woodworth and to said German American Bank, and to said various other creditors, and each of them, will be that said German American Bank and said estate of C. B. Woodworth and said various other creditors will receive a preference upon their claims over and
7 above other creditors of the same class, and that such transfer and such payments, and each of them, was made by said Frederic L. Grant Shoe Co. with intent to prefer such creditors over its other creditors.

Wherefore, your petitioner prays that service of this petition, with a subpœna, may be made upon said Frederic L. Grant Shoe Co. as provided by the bankruptcy law of 1898, as amended, and that it may be adjudged bankrupt within the purview of such law.

W. M. LAIRD COMPANY, *Petitioner,*
By ELLIOTT S. THOMAS.

McGUIRE & WOOD,
Attorneys for Petitioner,
711-717 *Wilder Building, Rochester, N. Y.*

8 STATE OF PENNSYLVANIA,
County of Allegheny, City of Pittsburg, ss:

Elliott S. Thomas, being duly sworn, deposes and says that he is a director of W. M. Laird Company (at the head of the purchasing department and personally asquainted with all the facts herein,) the petitioning creditor mentioned and described in the foregoing petition. That said petitioner is a corporation duly organized and existing under and by virtue of the Laws of the State of New Jersey, and that he does hereby make solemn oath that the statements of fact contained in said petition are true according to the best of his knowledge, information and belief.

ELLIOTT S. THOMAS.

Subscribed and sworn to before me, this 10th day of July, 1903.
[SEAL.] E. J. HUMBERT,
Notary Public.

My appointment dated Apr. 21, 1903.
My commission expires end next session of Senate.

9 Endorsed: No. 1502. United States District Court, Western District of New York. *In re* Frederic L. Grant Shoe Co. an alleged bankrupt. Petition. McGuire & Wood, Attorneys for petitioner, 711-717 Wilder Building, Rochester, N. Y. Filed Jul. 15, 1903, at 9.30 o'c. A. M. George P. Keating, Clerk.

10 In the District Court of the United States for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, an Alleged Bankrupt.

In Bankruptcy. No. 1502.

At the City of Rochester, in said District, on the 23rd day of July, A. D., 1903.

And now, the said Frederick L. Grant Shoe Company appears and denies that it has committed the act or any or either of the acts of bankruptcy, set forth in said petition, or that it is insolvent, and avers that it should not be declared bankrupt for any cause in said petition alleged, and it demands that the same may be inquired of by a jury.

Second.

The defendant, Frederic L. Grant Shoe Company, by protestation, not confessing nor acknowledging all or any of the matters or things in the said petition of said petitioner mentioned and contained to be true, in such manner and form as the same are therein set forth and alleged for plea to the whole of said petition:

This defendant says that said petitioner, W. M. Laird Company of Pittsburg, Pennsylvania is not a creditor in the manner or form alleged in said petition of this defendant and that the alleged demand of said petitioner mentioned and referred to in its said pe-
10½ tition, is not provable against said defendant as in said petition alleged, nor does the alleged demand of said petitioner against said defendant amount to five hundred dollars, or any other sum, and that said petitioner was not at the time of filing said petition herein, entitled to demand of said defendant for the alleged cause therein stated or for any other cause, the said sum of five hundred dollars, or any other sum, on account of any matter or thing alleged in said petition; that said petitioner has and had no such demand as set forth in said petition, nor had the demand amounting to the sum of three thousand seven hundred thirty-two

dollars and eighty cents ($3732.80) or any other sum due from said defendant to said petitioner for or on account of any matter or thing alleged in said petition, nor for or on account of any breach of any contract or for any other cause amounting in the aggregate to said sum of three thousand seven hundred thirty-two dollars and eighty cents, or any other sums.

Said defendant admits that at the time mentioned in said petition, said defendant was and is a corporation. It denies that it was or is incorporated under the Laws of the State of New York, and on the contrary alleges that it was at all of said times and still is a corporation duly organized, chartered and incorporated under, by virtue of and pursuant to the laws of the State of Arizona, and having its office and principal place of business in the City of Rochester, County of Monroe and State of New York. Said defendant admits that for the greater portion of the six months next preceding the date of filing of said petition, said defendant had had its
11 office and principal place of business at the City of Rochester, aforesaid, in the Western District of the State of New York, and that said defendant was organized for, has been and is a manufacturer of shoes and is engaged principally in manufacturing and mercantile pursuits. Said defendant admits that it owes debts to the amount of one thousand dollars and over. And it denies that it is insolvent. It admits that it has less than twelve creditors.

Said defendant admits that said petitioner is a corporation organized and existing as is alleged in said petition. Said defendant denies that said petitioner is a creditor or has provable claims against it amounting in the aggregate to more than five hundred dollars or any other sum.

Said petitioner admits that on or about September 3rd, 1902, and between that date and May 22nd, 1903, said petitioner purchased of said defendant, at various times, various amounts of merchandise consisting of women's shoes, and that said petitioner has paid said defendant in full the price agreed to be paid therefor. Said defendant denies that prior to the purchase of any of said shoes or at any other time, said defendant did, in consideration of such purchase by said petitioner, or for any other consideration, agree to guaranty or warrant that said shoes so sold by it to said petitioner, should be first class in every or any particular, both as to workmanship or material or as to either, or that they would give perfect satisfaction. Said defendant alleges on the contrary, that none of said sales were accompanied by an express warranty of any kind.
12 And it denies that there has been a breach of said express warranty or any warranty, and, upon information and belief it denies that said shoes or any of them were defective in workmanship or material as is alleged in said petition. And it denies that by reason of the facts and circumstances alleged in said petition, that said petitioner has sustained damages in the amount of three thousand seven hundred thirty-two dollars and eighty cents, or in any other sum. And said defendant denies each and every other allegation in said petition contained.

Said defendant alleges upon information and belief that this pro-

ceeding was not instituted nor is it prosecuted in good faith upon behalf of said petitioner for the relief afforded by the National Bankruptcy Law of 1898, entitled, "An Act to establish a uniform system of Bankruptcy throughout the United States," but was instituted for sinister, oppressive and vicious purposes and for the purpose of forcing said defendant to pay said petitioner a claim to which it is not entitled. All of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

SATTERLEE, BISSELL, TAYLOR & FRENCH,
Attorneys for Defendant, 9th Floor
German Insurance Bldg., Rochester, N. Y.

13 STATE OF NEW YORK,
Western District of New York, County of Monroe,
City of Rochester, ss:

Frederic L. Grant, makes solemn oath and says: That he is President of the above named defendant, which is a corporation organized, chartered and incorporated under, by virtue of and pursuant to the Laws of the State of Arizona, and having its principal place of business at the said City of Rochester. So much of the foregoing answer as concerns his own acts and deeds, is true, to the best of his knowledge, and so much as concerns the acts and deeds of any other person or persons he believes to be true. He further says that the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

FREDERIC L. GRANT.

Sworn to before me, this 23d day of July, 1903.

S. A. CROSTON,
[SEAL.] *Notary Public.*

Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, an alleged bankrupt. Answer. Satterlee, Bissell, Taylor & French, Attorneys for defendant, 9th Floor German Insurance Building, Rochester, N. Y. Filed Jul. 26, 1903. George P. Keating, Clerk.

14 United States District Court, Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, an Alleged Bankrupt.

In Bankruptcy. No. 1502.

The issues in the above entitled proceeding were tried on May 17th, 1905, at the City of Rochester, in said district, before the court and the following jury:

Charles A. Seaman,	Robert F. Hopwood,
Casper Vogel,	Edward G. Critchell,
Wm. B. Blackmon,	W. P. Frantz,
George J. Wunder,	Frank E. Daggs,
De Witt C. Denison,	Edward G. Hallauer,
Frederick Herman,	Henry C. Kennedy.

At the close of the petitioning creditor's evidence, no evidence being given in behalf of the alleged bankrupt, the court directed the jury to find,

First: That the petitioning creditor has a claim against the alleged bankrupt in the sum of $3454.

Second: That the transfer by the bankrupt of its property to the German-American Bank, a creditor, was to enable it to obtain a greater percentage of its debt than any other creditor of the same class.

The jury thereupon found pursuant to said directions.

SIDNEY W. PETRIE, *Clerk.*

15 At a regular term of the United States District Court, held in and for the Western District of New York, at the Government Building, in the City of Rochester, N. Y., on the 18th day of May, 1905.

Present: Hon. John R. Hazel, District Judge.

United States District Court for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, a Bankrupt. No. 1502.

A petition in involuntary bankruptcy having been filed herein by W. M. Laird Company, praying that the Frederic L. Grant Shoe Company, be declared bankrupt; and said alleged bankrupt having filed an answer, denying its insolvency and the commission of any of the acts of bankruptcy alleged in the petition, and demanding a trial by jury of said issues; and said alleged bankrupt having heretofore made a motion to dismiss said petition, and an order having been previously entered herein on September 9th, 1903, denying said motion and directing that the claim of the petitioner, as alleged in the petition, be liquidated by the jury at the jury trial demanded as aforesaid, which order, upon appeal therefrom, was duly affirmed by the United States Circuit Court of Appeals for the Second Circuit, and the said matters having come on for trial at a regular Term of the United States District Court for the Western District of New York, held at the Government Building, in the City of Rochester, N. Y., on the second Tuesday of May, 1905, and having
16 been tried on the 17th and 18th days of May, 1905, before Hon. John R. Hazel, District Judge, and a jury, Hiram R. Wood, Esq., appearing in behalf of the petitioner, and Porter M. French, Esq., appearing for the alleged bankrupt, and at the close of all the evidence the Court having directed the jury to find a ver-

dict that the said alleged bankrupt did, within four months of the filing of the petition herein, commit an act of bankruptcy, in that it transferred a portion of its property to the German American Bank of Rochester, one of its creditors, with the intent to prefer said German American Bank over its other creditors, and that at the time of said transfer said alleged bankrupt was insolvent, and that the petitioner has a provable claim against said alleged bankrupt for damages for the breach of warranty in the sale of shoes, and that the amount of such claim of the petitioner is the sum of $3,454.00, and the jury having found a verdict accordingly;

Now, upon motion of McGuire & Wood, attorneys for the petitioner, it is

Ordered, adjudged and decreed:

First: That Frederic L. Grant Shoe Company, a corporation, having its principal office and place of business in the City of Rochester, N. Y., is hereby declared and adjudged bankrupt.

Second: That the claim of the W. M. Laird Company, the petitioner herein, against said bankrupt, for damages for breach of warranty in the sale of shoes as alleged in the petition, be,
17 and the same hereby is, liquidated and established at the sum of $3,454.00, at which sum it may be proved and allowed herein.

Third: That the petitioner, W. M. Laird Company, recover and be paid out of the bankrupt's estate in due course of administration, the same costs and disbursements that are allowed to a party recovering in a suit in equity when paid out of a fund in court, the same to be fixed and allowed by the referee to whom this matter shall hereafter be referred.

JOHN R. HAZEL, *U. S. J.*

Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, a bankrupt. Adjudication of bankruptcy and liquidation of claim. McGuire & Wood, Attorneys for petitioner, 711-717 Wilder Building, Rochester, N. Y., Filed Jun. 8, 1905. Sidney W. Petrie, Clerk.

18 In the District Court of the United States for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, Bankrupt.

In Bankruptcy. No. 1502.

The above entitled cause being a case in which the above named Frederic L. Grant Shoe Company is entitled to take an appeal to the Supreme Court of the United States from the adjudication of bankruptcy herein, and pursuant to the requirements of General Order in Bankruptcy, numbered thirty-six, I make and file the following finding of facts and conclusions of law thereon, separately:

I find as a matter of fact:

First: That on the 15th day of July, 1903, W. M. Laird Company of Pittsburg, Pennsylvania, filed in the office of the Clerk of the United States District Court for the Western District of New York, at Buffalo, New York, its petition against the above named Frederic L. Grant Shoe Company, wherein said petitioner prayed that service of said petition with a subpœna might be made upon said Frederic L. Grant Shoe Company, as provided by the Bankruptcy Law of 1898, as amended, and that it might be adjudged a bankrupt within the purview of such law.

Second: That at the time of filing said petition, said above named Frederic L. Grant Shoe Company was a corporation having
19 its office and principal place of business in the City of Rochester, Monroe County, New York, and that for the greater portion of six months next preceding the date of the filing of said petition, said Frederic L. Grant Shoe Company had its office and principal place of business at said City of Rochester in said Western District of New York, and that it was organized for, had been and was engaged principally in manufacturing and mercantile pursuits.

Third: That at the time of filing said petition, said Frederic L. Grant Shoe Company owed debts to the amount of one thousand dollars and over, and that it was insolvent; that it then had less than twelve creditors and at that time it owed no debts except an indebtedness owing by it to the German-American Bank of Rochester, and the claims hereinafter set forth on account of damages for breach of warranty which accompanied the sale of personal property, owing to said petitioner.

Fourth: That said petitioner, said W. M. Laird Company, at the time of filing said petition was a corporation duly organized and existing under and by virtue of the Laws of the State of New Jersey, engaged in the business of buying and selling shoes and having its office and principal place of business in the City of Pittsburg, in the State of Pennsylvania.

Fifth: That said petitioner, at the time of filing said petition, was a creditor of said Frederic L. Grant Shoe Company having
20 a provable claim against it amounting to more than five hundred dollars, and that it had no security of any kind for said debt, or any part thereof, and that it had not received a preference, within the meaning of the Bankruptcy Act as amended.

Sixth: That said petitioner, said W. M. Laird Company's claim above referred to, arose from the following transactions and circumstances. On or about September 3rd, 1902, and between that date and May 22nd, 1903, said petitioner purchased of said Frederic L. Grant Shoe Company, at various times and in various amounts, merchandise consisting of women's shoes, to be manufactured by said Frederic L. Grant Shoe Company for said petitioner, in accordance with samples shown said petitioner when the orders therefor were given; that said petitioner received said shoes from time to time and remitted and paid to said Frederic L. Grant Shoe Company the price agreed to be paid therefor, and that all of said shoes so delivered

had been fully paid for in accordance with the terms upon which they were purchased; that prior to the purchase of any of said shoes, said Frederic L. Grant Shoe Company did, for a valuable consideration, and in consideration of said purchase, expressly guarantee and warrant that said shoes so manufactured and sold by it to said petitioner, should be first-class in every particular, both as to workmanship and materials, and that they would give perfect satisfaction; that said Frederic L. Grant Shoe Company made a breach of said express warranty in that, of the shoes so sold and delivered to said petitioner, as aforesaid, there were a large number of pairs of women's shoes which were defective in workmanship and materials and
21 which were not made of proper materials, by reason of which said petitioner sustained damage in the sum of three thousand four hundred and fifty-four dollars ($3,454.00); that said defects were latent defects and were undiscoverable upon an examination of said shoes by mere inspection.

Seventh: That within four months preceding the filing of said petition herein, said Frederic L. Grant Shoe Company did commit an act of bankruptcy, in that it transferred a portion of its property to said German-American Bank of Rochester, one of its creditors, with intent to prefer said German-American Bank of Rochester over its other creditors.

Eighth: That said Frederic L. Grant Shoe Company on the 28th day of July, 1903, filed in the office of the Clerk of the United States District Court for the Western District of New York, at Buffalo, New York, its answer to said petition, and said matter came on to be heard at a regular term of said United States District Court held in the City of Rochester, New York, commencing on the second Tuesday of May, 1905, and said Frederic L. Grant Shoe Company then and there made a motion to dismiss this proceeding upon the ground that said petitioner had no provable claim against it, that it had no standing in court to ask for an adjudication of bankruptcy, and that this Court had no jurisdiction to entertain said proceeding or to adjudge it a bankrupt; that the only creditor of said Frederic L. Grant Shoe Company, aside from said petitioner, namely, German-American Bank of Rochester, appeared by its counsel and united in said motion, and that said motion was, by the Court, then and there denied.

22 Ninth: That the fact of insolvency and the commission of an act of bankruptcy on the part of said Frederic L. Grant Shoe Company, was then and there, in open court, admitted; whereupon the Court proceeded, with the aid of a jury, to liquidate the said claim of said petitioner. No evidence was offered upon the part of said Frederic L. Grant Shoe Company and the said claim of said petitioner was then and there, thereupon, liquidated at said sum of three thousand four hundred and fifty-four dollars ($3,454.00).

I find as conclusions of law:

First: That at the time of filing said petition said petitioner, the W. M. Laird Company, had a provable claim against said Frederic L. Grant Shoe Company.

Second: That this Court had jurisdiction to entertain this pro-

ceeding and render a judgment adjudging said Frederic L. Grant Shoe Company a bankrupt.

Third: That said Frederic L. Grant Shoe Company, a corporation having its principal office and place of business in the City of Rochester, New York, be and it hereby is declared and adjudged a bankrupt.

Fourth: That the said claim of the petitioner, said W. M. Laird Company, against said bankrupt, for damages for breach of warranty in the sale of shoes as alleged in said petition, be and the same hereby is liquidated and established at the sum of three thousand four hundred fifty-four dollars ($3,454.00) at which sum it may be proved and allowed herewith.

23 Fifth: That said petitioner, W. M. Laird Company recover and be paid out of the bankrupt's estate, in due course of administration, the same costs and disbursements that are allowed to a party recovering in a suit in equity when paid out of the funds in court, the same to be fixed and allowed by the referee to whom this matter shall hereafter be referred.

Dated, June 7, 1905. JOHN R. HAZEL, *U. S. J.*

O. K.

McG. & WOOD.

24 Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, bankrupt. Findings of fact and conclusions of law. Filed June 8, 1905, Sidney W. Petrie, Clerk.

25 In the District Court of the United States for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, Bankrupt.

In Bankruptcy. No. 1502.

The above named Frederic L. Grant Shoe Company, bankrupt, conceiving itself aggrieved by the judgment and decree made and entered on the 7th day of June, 1905, in the above entitled cause, adjudging said Frederic L. Grant Shoe Company, a bankrupt, does hereby appeal from said judgment and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal be allowed and that a transcript of the record, proceedings and papers, upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated June 7, 1905.

EUGENE H. SATTERLEE.
CHARLES J. BISSELL.
JOSEPH W. TAYLOR AND
PORTER M. FRENCH.

SATTERLEE, BISSELL, TAYLOR & FRENCH,
Attorneys for Bankrupt, 9th Floor German Insurance Bldg., Rochester, New York.

The foregoing claim of appeal is allowed and the W. M. Laird Company of Pittsburg, Pennsylvania, may be made appellee. Said appeal is to operate as a supersedeas of the decree and judgment of bankrupt above referred to upon the execution of a bond in
26 the penalty of two hundred and fifty dollars. The Ætna Indemnity Company is accepted on said bond as surety and said bond is now approved.

Dated June 7th, 1905.

JOHN R. HAZEL.
United States District Judge for the Western District of New York.

27 Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, a bankrupt. Notice of appeal and allowance of appeal. Satterlee, Bissell, Taylor & French, Attorneys for bankrupt, appellant, 9th Floor, German Insurance Building, Rochester, N. Y. Filed Jun. 8, 1905, Sidney W. Petrie, Clerk.

28 In the District Court of the United States for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, Bankrupt.

In Bankruptcy. No. 1502.

The Frederic L. Grant Shoe Company, the above named appellant, hereby assigns error to the decision and judgment of the District Court of the United States for the Western District of New York, herein, in the following particulars:

First: In that it decided that under the petition and answer in this case it had jurisdiction to entertain the proceeding and render a judgment adjudging that said Frederic L. Grant Shoe Company, said appellant, is a bankrupt.

Second: That said District Court had no jurisdiction to so adjudge, because it appears from said petition and answer, that said petitioner, said W. M. Laird Company, at the time of filing said petition, had no provable claim against said Frederic L. Grant Shoe Company, to the extent of five hundred dollars or any other sum.

Third: That said District Court had no jurisdiction to so adjudge that said Frederic L. Grant Shoe Company, said appellant, is a bankrupt, because it appears from said petition and answer herein, that the claim of said petitioner in bankruptcy, said W. M. Laird Company, is based wholly upon damages alleged to have been sustained by it by reason of a pretended breach of the warranty
29 which accompanied the sale of personal property, which damages had never been in any way liquidated, and the pretended facts upon which said damages are based, are by said answer, denied.

Fourth: That said District Court had no jurisdiction to so adjudge that said Frederic L. Grant Shoe Company, said apellant, is a bankrupt, because under the Bankruptcy Act of 1898, there is no possible way for said petitioner's claim in bankruptcy to become liquidated, excepting pursuant to the provisions of Section 63-b, which provides for liquidating unliquidated claims in such manner as the court shall direct and that thereafter such claims may be proved and allowed against the estate; that the statute plainly shows the intention that there shall first be an adjudication in bankruptcy before such unliquidated and disputed claims can be in any manner proven.

Fifth: That said District Court had no jurisdiction to so adjudge that said Frederic L. Grant Shoe Company, said appellant, is a bankrupt, in that said United States District Court for the Western District of New York, erroneously denied the motion of said Frederic L. Grant Shoe Company, said appellant, to dismiss said proceeding, upon the ground that said petitioner, said W. M. Laird Company, had no provable claim at the time of filing its petition and that said Court was wholly without jurisdiction.

30 Dated June 7, 1905.

SATTERLEE, BISSELL, TAYLOR & FRENCH,

Attorneys for Frederic L. Grant Shoe Company, Appellant, 9th Floor, German Insurance Building, Rochester, New York.

31 Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, a bankrupt. Assignment of error. Satterlee, Bissell, Taylor & French, Attorneys for bankrupt, appellant, 9th Floor, German Insurance Building, Rochester, N. Y. Filed Jun. 8, 1905, Sidney W. Petrie, Clerk.

32 In the District Court of the United States for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, Bankrupt.

In Bankruptcy. No. 1502.

In this case I hereby certify, that when said case came on to be heard at a Term of this Court, held at the City of Rochester commencing on the second Tuesday of May, 1905, counsel for the alleged bankrupt, said Frederic L. Grant Shoe Company, at the opening of said hearing, moved to dismiss said petition in bankruptcy and the proceedings herein, upon the ground, as alleged, that said Court had no jurisdiction to entertain said proceeding or to render a decree, or order an adjudication of bankruptcy herein against said alleged bankrupt, for the reason that said petitioner, W. M. Laird Company had, at the time of filing its petition herein, no provable

claim against said bankrupt to the extent of five hundred dollars or any other sum, and had no standing in court to ask that said alleged bankrupt be adjudged a bankrupt; for the reason that the claim of said petitioner in bankruptcy, said W. M. Laird Company, is based wholly upon damages alleged to have been sustained by it by reason of a pretended breach of the warranty which accompanied the sale of personal property, which damages had never been in any way liquidated, and the pretended facts upon which said damages are based are by the answer herein denied; for the reason that under the Bankruptcy Act of 1898, there is no possible way for said pe-
33 titioner's claim in bankruptcy to become liquidated, except pursuant to the provisions of Section 63-b, which provides for liquidating unliquidated claims in such manner as the court shall direct and that thereafter such claims may be proved and allowed against the estate; for the reason that the statute plainly shows the intention that there shall first be an adjudication in bankruptcy before such unliquidated and disputed claim can be in any manner proven; for the reason that under the circumstances shown by the petition and answer herein, said Court was wholly without jurisdiction. I thereupon denied said motion to dismiss, and counsel for said alleged bankrupt, said Frederic L. Grant Shoe Company thereupon then and there duly excepted to such ruling.

I further certify that upon the trial which followed the denial of said motion, there was no testimony offered upon the part of said alleged bankrupt. Said petitioning creditor, said W. M. Laird Company, proceeded to establish its claim for damages sustained on account of the alleged breach of warranty which accompanied the sale of personal property, and said claim was then and there established at the sum of three thousand four hundred fifty-four dollars ($3,454.00).

I hereby certify that said question of jurisdiction was the only question in issue therein and that at the termination of the testimony offered by said petitioner herein, I directed a verdict establishing said petitioner's claim at the amount above stated, and ad-
34 judging that said Frederic L. Grant Shoe Company was a bankrupt.

This certificate is made conformably to the Act of Congress of March 3rd, 1891, Chapter 517, and said question of jurisdiction is the only question certified by me under this certificate to the Supreme Court.

Dated June 7, 1905.

JOHN R. HAZEL,
United States District Judge for Western District of New York.

35 Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, bankrupt. Certificate of jurisdictional question involved. Filed June 8, 1905, Sidney W. Petrie, Clerk.

36 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. M. Laird Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for the Western District of New York, and filed in the Clerk's office of said Court on the 7th day of June, 1905, in a cause wherein the Frederic L. Grant Shoe Company is appellant, and you, said W. M. Laird Company, are appellee, to show cause, if any, why the decree rendered against the said appellant by said United States District Court, which adjudged said appellant a bankrupt and which was entered in the Clerk's office of said United States District Court at Buffalo, New York, on the 7th day of June, 1905, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Hon. John R. Hazel, United States District Judge for the Western District of New York, at Buffalo, New York, this 7th day of June, 1905.

JOHN R. HAZEL,
Judge United States District Court
for the Western District of New York.

Service of a copy of the foregoing citation is hereby admitted this 12 day of June, 1905.

McGUIRE AND WOOD,
Attorneys for Appellee.

37 Endorsed: No. 1502, In Bankruptcy. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, bankrupt. Citation. Satterlee, Bissell, Taylor & French, Attorneys for bankrupt, appellant, 9th floor German Insurance Building, Rochester, N. Y. Filed Jun. 13, 1905, Sidney W. Petrie, Clerk.

38 In the District Court of the United States for the Western District of New York.

In the Matter of FREDERIC L. GRANT SHOE COMPANY, Bankrupt.

In Bankruptcy. No. 1502.

To the Clerk:

You are requested to take a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record, the following and no other papers, to wit:

First: Subpœna.
Second: Petition in bankruptcy.
Third: Answer of alleged bankrupt.

Fourth: Judgment or adjudication of bankruptcy.
Fifth: Findings of Fact and Conclusions of Law.
Sixth: Notice of appeal to Supreme Court.
Seventh: Assignment of errors.
Eighth: Allowance of appeal.
Ninth: Certificate of jurisdictional question involved.
Tenth: Citation.
Eleventh: Præcipe for transcript.
Twelfth: Certificate to correctness of transcript of record.

Yours, etc.,
SATTERLEE, BISSELL, TAYLOR & FRENCH,
Attorneys for Appellant.

39 Endorsed: No. 1502. United States District Court, Western District of New York. In the matter of Frederic L. Grant Shoe Company, a bankrupt. Præcipe for transcript. Satterlee, Bissell, Taylor & French, Attorneys for bankrupt, appellant, 9th Floor, German Insurance Building, Rochester, N. Y. Filed Jun. 8, 1905, Sidney W. Petrie, Clerk.

40 UNITED STATES OF AMERICA,
Western District of New York, ss:

I, Sidney W. Petrie, Clerk of the District Court of the United States of America for the Western District of New York, do hereby certify that the foregoing pages, numbered from 1 to — inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause entitled "In Bankruptcy, No. 1502. In the matter of Frederic L. Grant Shoe Company, an alleged bankrupt," appellant, as the same remain of record and on file in my office, as follows: subpœna, petition, answer, clerk's minutes, adjudication of bankruptcy and liquidation of claim, findings of fact and conclusions of law, notice of appeal and allowance of same, assignment of error, certificate of jurisdictional question involved, citation, præcipe for transcript.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of Buffalo, in said district, this 21st day of June, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and twenty-ninth.

[United States District Court, Seal. Western District of New York.]

SIDNEY W. PETRIE, *Clerk.*

41 [Endorsed:] United States Supreme Court. In the matter of Frederic L. Grant Shoe Co. bankrupt-appellant. Record on appeal from United States District Court, Western District of New York.

Endorsed on cover: File No. 19,820. W. New York D. C. U. S. Term No. 318. Frederic L. Grant Shoe Company, appellant, *vs.* W. M. Laird Company. Filed June 28th, 1905. File No. 19,820.